

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BRIAN EDWARD DAVIS

Petitioner,

V.

**LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,**

Respondent.

No.

Capital Case

MOTION FOR APPOINTMENT OF COUNSEL

Petitioner, BRIAN DAVIS, by undersigned counsel, respectfully requests that the Court appoint Deborah Williams, Federal Public Defender for the Southern District of Ohio, to represent him in federal habeas corpus proceedings pursuant to 18 U.S.C. § 3599(a)(2). In support of this request, petitioner sets forth the following:

1. On June 11, 1992, Mr. Davis was convicted of capital murder and five days later he was sentenced to death. After many subsequent proceedings, on November 10, 2009, the Texas Court of Criminal Appeals reversed Mr. Davis's death sentence and remanded it for a new trial as to sentence. After a new punishment trial, on March 9, 2011, Mr. Davis was once again sentenced to death. The Texas Court of Criminal Appeals affirmed Mr. Davis' conviction and death sentence on direct appeal on October 23, 2013. *Davis v. State*, 2013 WL 5773353 (Tex. Crim. App. 2013) (unpublished).

2. On May 25, 2016, the Texas Court of Criminal Appeals denied Mr. Davis' application for habeas relief. Mr. Davis is entitled to the appointment of counsel under 18 U.S.C.

§ 3599(a). He has never had his constitutional claims for relief addressed by a federal court and is entitled to the assistance of counsel in order to present those claims. *See* 18 U.S.C. § 3599(e); *McFarland v. Scott*, 512 U.S. 849, 857-58 (1998).

3. The Texas Office for Capital and Forensic Writs (OCFW) represented Mr. Davis on state habeas proceedings pursuant to Texas Code of Criminal Procedure, Article 11.071, and continued to represent Mr. Davis at the time his state habeas application was denied. The OCFW, however, is statutorily precluded from representing clients in federal habeas proceedings. We have learned that counsel with the Texas Habeas Assistance and Training (TX HAT) project¹ has recruited counsel willing to undertake Petitioner's federal habeas representation.

4. The Federal Public Defender for the Southern District of Ohio maintains a Capital Habeas Unit that specializes in capital habeas cases under 28 U.S.C. § 2254. Deborah Williams, the Federal Public Defender for the Southern District of Ohio, is willing to take the appointment for Mr. Davis. She will assign attorneys responsible for Mr. Davis' representation from the Capital Habeas Unit in her office. This unit is supervised by Carol Wright. Attorney Wright has been licensed to practice law in the state and federal courts of Ohio and Pennsylvania for thirty years with a concentration in capital cases. She has been supervising the Capital Habeas Unit in the Southern District of Ohio Federal Public Defender Office since it was formed in 2008. She has been found to be qualified for appointment as counsel in § 2254 cases by the Northern and Southern District of Ohio federal courts and the Sixth Circuit Court of Appeals in numerous instances. As with all out-of-district appointments, the Federal Defender for the Southern District

¹ Texas Habeas Assistance and Training (TXHAT) project is an initiative of the Administrative Office of The United States Courts, Office for Defender Services. The TXHAT project is comprised of experienced capital habeas attorneys who contract with the Administrative Office to locate qualified federal habeas counsel and provide resources and support to them.

of Ohio must seek approval to be appointed from the Administrative Office of the United States Courts, Defender Services Office, and has done so here. On June 27 2016, the Administrative Office approved the appointment of the Federal Defender to represent Mr. Davis. Pursuant to the protocol in place, Chief Judge Guy Cole of the United States Court of Appeals, Sixth Circuit, has been notified and has indicated that he has no objection to this out-of-district appointment. In addition, Chief Judge Carl E. Stewart of the United States Court of Appeals, Fifth Circuit, has interposed no objection to the appointment of the Federal Defender.

4. The qualifications of Ms. Williams, Ms. Wright, and the Capital Habeas Unit of the Federal Defenders for the Southern District of Ohio well surpass the qualifications for counsel outlined in 18 U.S.C. § 3599(c) and (d), and they are willing to accept appointment. Ms. Wright's contact information is as follows:

Carol Wright
Supervising Attorney
Capital Habeas Unit
Federal Public Defender, Southern Ohio
10 W. Broad Street, Suite 1020
Columbus, Ohio 43215
(614) 469-2999

5. Mr. Davis has been deemed indigent by the state courts and entitled to appointed counsel, and he remains so.

WHEREFORE, Petitioner requests that the Court appoint Deborah Williams, Federal Public Defender for the Southern District of Ohio, to represent him in federal habeas corpus proceedings.

June 27, 2016
Austin, Texas

Respectfully submitted,

/s/ Benjamin B. Wolff

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CERTIFICATE OF SERVICE

On June 27, 2016, a copy of the foregoing motion was served upon the Office of the Texas Attorney General by United States mail at the following address:

Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

In addition, an electronic copy of this motion was served upon Edward L. Marshall, Chief, Criminal Appeals Division, Office of the Texas Attorney General via electronic mail.

/s/ Benjamin B. Wolff